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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,923	01/13/2004	Shaoher X. Pan	23340-08598	3765
758	7590	12/07/2004	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041				OLSEN, ALLAN W
ART UNIT		PAPER NUMBER		
		1763		

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/756,923	PAN ET AL.	
	Examiner	Art Unit	
	Allan Olsen	1763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 January 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-30 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/26, 6/28, 8/6/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| <u>2/23, 3/22</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-30 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-30 of copending Application No. 10/7378,041. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13, 15 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,999,306 issued to Atobe et al. (hereinafter, Atobe).

Atobe teaches a method of fabricating a spatial light modulator, comprising:
forming cavities in a first side of a first substrate (see through holes extending through

layer 422 in fig. 10F), fabricating electrodes on a first side of a second substrate (510 in fig.10C), bonding the first side of the first substrate to the first side of the second substrate (as shown in fig 10B), and forming hinges, connectors, and mirror plates on a second side of the first substrate after bonding the first side of the first substrate to the first side of the second substrate (see figs 10D-10G).

Atobe teaches depositing reflective layer 402 onto a silicon substrate before forming the hinges and connectors and mirror plates.

Atobe teaches thinning the second side of the first substrate before creating a reflective surface on the second side of the first substrate (see fig. 10B-10D)

Atobe teaches bonding the substrate at a temperature of less than 500°C (column 16, lines 46-48).

Atobe teaches the substrates are aligned such that the addressing circuitry is aligned with opposing mirror elements (column 18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atobe in view of U.S. Patent 6,252,227 issued to Chan et al. (hereinafter, Chan).

The teaching of Atobe as noted above is herein relied upon.

Atobe does not teach anisotropically etching with SF₆, HBr and O₂.

Chan teaches anisotropically etching with SF₆, HBr and O₂.

It would have been obvious to one skilled in the art to use SF₆, HBr and O₂ to anisotropically etch the openings in the method of Atobe because Chan teaches that a gas mixture containing HBr/SF₆ /O₂ is a well known etchant composition for anisotropically etching silicon in a manner that readily provides etched features with smooth vertical walls.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Atobe in view of U.S. Patent 6,201,521 issued to Doherty.

The teaching of Atobe as noted above is herein relied upon. Additionally, it is noted the Atobe teaches forming a memory buffer (column 26, lines 53-58).

Atobe does not teach providing a pulse width modulator.

Doherty teaches providing a pulse width modulator.

It would have been obvious to one skilled in the art to provide a pulse width modulator to the device of Atobe because Doherty teaches that this is a conventional method of obtaining intermediate levels of illumination between white (on) and black (off) (column 1, lines 38-40).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Olsen whose telephone number is 571-272-1441. The examiner can normally be reached on M-F 1-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Mills can be reached on 571-272-1439. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Allan Olsen
Primary Examiner
Art Unit 1763